

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.7486 OF 2005

Lahu Tayappa Kamble & Ors. .. Applicants

Versus

State of Maharashtra & Ors. .. Respondents

Mr.Rupesh Bobde with Mr.R.V.More for applicants

Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 24th November 2005.

P.C.

. Heard Mr.Rupesh Bobde for applicant and
Mr.Mirza, A.P.P. for State. Applicants are
arrayed as accused Nos. 1, 2, 4 and 5 in

C.R.No.154 of 2005 registered with Juna Rajwada Police Station, Kolhapur alleging offences under section 147 to 149, 302, 323 of I.P.C. They have been arrested on 17th October 2005 and are in custody since then.

2. From the prosecution case itself it is clear that the accused and complainant are neighbours and there is ongoing boundary dispute. It appears that on the relevant date the deceased tried to intervene and there was complaint filed against deceased and his colleagues. On 16th October 2005, on the date of incident, it appears that the deceased along with his two friends visited the house of complainant for some work and at that time the present applicants assaulted him. It is alleged by the complainant that the present applicants gave him blows of fist and kicks.

3. Application narrate that the first

applicant is 60 years old and is heart patient having undergone by-pass surgery. Second applicant is a lady and also medically unfit. Even the third applicant appears to be a heart patient, according to the applicant inasmuch as he was admitted in hospital from time to time. Besides that he is an employee of local municipal council. Fourth applicant is teen ager. The F.I.R. says that the knife blow was attributed to original accused No.3 and as far as accused are concerned, they have given fist blows to the deceased. Applicants have pointed out that because of the ongoing boundary dispute and antecedents of the deceased himself, the quarrel took place. In fact, a complaint was lodged by applicants themselves against the deceased. It is in these circumstances, as well as the fact that the applicants are without any criminal antecedents, the present application is filed.

4. Mr.Mirza, learned A.P.P. states that

charge sheet is yet to be filed and this is not a stage where the application for bail should be entertained. Moreover, he states that specific role is assigned as far as these applicants are concerned. Their presence is not denied at the incident site and also the fact that they administered fist blows.

5. In my view, despite investigations being incomplete, considering the fact that as far as present applicants are concerned, the allegations being administration of fist and kick blows and no other role is attributed to them, besides their medical condition and social status they deserve to be enlarged on bail.

6. I have perused the F.I.R. which is annexed to the application with the assistance of the learned Counsel appearing for both sides. There is no dispute as far as the incident is concerned. However, that the deceased of the

applicant being neighbours and the on-going disputes being cause of the incident, it is alleged that as far as present applicants are concerned, they have only administered kick and fist blows. There is no recovery as far as these applicants are concerned. It is accused No.3 who is supposed to have assaulted the deceased with knife. Cause of death is stab injury attributed to accused No.3. Considering medical condition of the applicant Nos. 1 and 2 and further applicant No.2 being lady and as well as applicant No.4 having no criminal antecedents, in my view, they deserve to be enlarged on bail with the following conditions:-

- i) The applicants shall be released on bail in connection with C.R.No.154 of 2005 registered with Juna Rajwada Police Station Kolhapur in the sum of Rs.5000/- each with one or two sureties in the like amount.

ii) Applicants shall report to concerned police station twice a week except applicant No.2 between 10.00 a.m. and 12.00 noon on every Monday and Thursday.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) The applicants shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application disposed of in above terms.

vii) Parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)